

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of
Telecommunications and Energy on its
own motion regarding (1) implementation of
Section 276 of the Telecommunications Act
of 1996 relative to Public Interest Payphones,
(2) Entry and Exit Barriers for the Payphone
Marketplace, (3) New England Telephone
and Telegraph Company d/b/a NYNEX'S
Public Access Smart-Pay Line Service, and
(4) the rate policy for operator service
providers.

D.P.U./D.T.E. 97-88/18 (Phase II)

COMMENTS OF THE
NEW ENGLAND PUBLIC COMMUNICATIONS COUNCIL, INC.

The New England Public Communications Council, Inc. ("NEPCC"), in accordance with the Department of Telecommunications and Energy's ("DTE" or "Department") Order issued June 23, 2004 in this proceeding ("*Phase II Order*") hereby files its comments on Verizon Massachusetts' ("Verizon MA") July 22, 2004 Compliance Filing in this docket ("*Compliance Filing*").¹

I. Summary

1. The purpose of the *Phase II Order* was to address the pricing of payphone access services in light of the requirements of the Telecommunications Act of 1996 and the implementing rules of the Federal Communications Commission ("FCC") (i.e., the *Payphone Orders*).² The *Compliance Filing* is

¹ The *Compliance Filing* was originally due on July 8, 2004. The Hearing Officer extended the deadline until July 22, 2004. Under the terms of the *Phase II Order*, the NEPCC was given one week after Verizon MA's filing to provide its comments. *Phase II Order*, at p. 34.

² See *Phase II Order*, at p.1. As used herein the *Payphone Orders* consist of the following: *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomm. Act of 1996*, CC Docket No. 96-128, *First Report and Order*, 11 FCC Rcd. 20541 (1996); *Order On Reconsideration*, 11 FCC Rcd. 21233 (1996), *aff'd in part and remanded in part sub nom., Ill. Public*

inconsistent with the requirements and directives of the *Phase II Order* in several respects and should be revised before taking effect on October 6, 2004.

II. The Automatic Tie To UNE Rates Must Be Removed

2. The NEPCC objects to Sections 1.1.5A. and 1.2.4A in Part B of the new DTE MA No. 18. Specifically, the NEPCC objects to the language which states that “[t]he rate [for PASL or PAL, as the case might be] is equal to the equivalent unbundled network element (UNE) rates for a loop and port that a payphone provider would pay if purchasing the same elements through DTE MA No. 17 Tariff.” That language should be replaced in both cases by the following: “The rate is specified in Part M, Section 1 of this Tariff.”

2. The effect of Verizon MA’s proposed tariff language would be to produce an “automatic” PASL and PAL tariff change tied directly to any changes in the UNE rates in the referenced DTE MA No. 17. No doubt Verizon is hoping that after overcharging independent payphone service providers (“PSPs”) for over 7 years it will get an automatic rate boost based on the potential relaxation of its obligations under Section 251 and 252 of the Communications Act of 1934, as amended (“Act”).

3. The NEPCC respectfully submits that not even footnote 26 of the *Phase II Order* sanctions such an automatic tie-in mechanism and to include it in the tariff is not in compliance with the *Phase II Order*, much less Section 276 of the Act and the *Payphone Orders*. As the NEPCC previously noted, the Department initiated Phase II of this proceeding seeking to determine whether Verizon MA’s PAL and PASL tariffs complied with FCC requirements as reflected in Section 276 and the *Payphone*

Telecomms. Ass’n v. FCC, 117 F.3d 555 (D.C.Cir. 1997); *First Clarification Order*, 12 FCC Rcd. 20997 (Com. Car Bur. 1997); *Second Clarification Order*, 12 FCC Rcd. 21370 (Comm. Car. Bur. 1997); *Second Report and Order*, 13 FCC Rcd. 1778 (1997), *aff’d in part and remanded in part sub nom., MCI Telecomms. Corp v. FCC*, 143 F.3d 606 (D.C. Cir. 1998); *Third Report and Order on Reconsideration of the Second Report and Order*, 14 FCC Rcd. 2545 (1999), *aff’d, American Public Communications Council, Inc. v FCC*, 215 F.3d 51 (D.C.Cir. 2000); *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, 15 FCC Rcd. 9978 (Com. Car. Bur. 2000) (“*Wisconsin I*”), *aff’d in part, Memorandum Opinion and Order*, 17 FCC Rcd. 2051 (2002) (“*Wisconsin II*”), *aff’d, New England Public Communications Council v. FCC*, 334 F.3d 69 (D.C. Cir. 2003).

Orders. Phase II Order, at p. 5. Indeed, the *Order* opens by stating that it “concerns the requirements for pricing wholesale payphone access services under the Telecommunications Act of 1996 . . . and the applicable rules of the Federal Communications Commission.” *Id.*, at p. 1.

4. In DTE 01-31, while considering a wholly different issue, namely an alternative regulatory plan for Verizon MA, the Department decided, for reasons totally unrelated to the requirements of Section 276 and the *Payphone Orders*, that PAL services should be priced at Unbundled Network Element (“UNE”)/ TELRIC levels. *Id.*, at p. 9. At the very same time, the Department deferred to this docket the separate question of “whether Verizon’s proposed rates for PAL and PASL services comply with the FCC’s Payphone Orders.” *Id.*, at pp. 9-10.

5. Throughout the analytical sections of the *Phase II Order*, the Department refers to the appropriate cost methodology “consistent with” and necessary to “comply with” the FCC’s new services test, which is a key component of compliance with the FCC’s requirements. *Id.*, at pp. 12, 13, 16, and 23. And in directing that Verizon MA adjust its rates, the *Phase II Order* finds that upon such adjustment “Verizon’s PAL and PASL rates *will be in compliance* with our directive for TELRIC-based rates *and also* with FCC requirements for payphone access line rates.” *Id.*, at p. 30 (emphasis added). All of the foregoing reflects a recognition by the Department that its resolution of the pricing regime for PAL and PASL lines in the *Phase II Order* is satisfying two separate, independent and distinct regulatory requirements. One is self-imposed, as it relates to its decisions about an alternative regulation plan for Verizon MA, as outlined in Docket 01-31. The other is Federally-imposed by the now long-standing requirements of Section 276 and the *Payphone Orders*.

6. The rates that the Department has ordered at this point satisfy the two independent requirements, with this Docket resolving, as it states in its introduction, “the requirements for pricing wholesale payphone access services under the Telecommunications Act of 1996 . . . and the applicable rules of the Federal Communications Commission.” The NEPCC is certainly aware of

the regulatory developments concerning UNE/TELRIC pricing as it relates to Sections 251 and 252 of the Act and unbundling requirements. But adjustments that might be deemed appropriate in that realm cannot automatically determine or change what the FCC, and the Department in its *Phase II Order*, are required to do by Section 276, as implemented by the FCC. Section 276 and the *Payphone Orders* require cost-based rates and cost-based rates based on the UNE/TELRIC methodology are an appropriate proxy for what is required by Section 276. Therefore, the automatic tie-in proposed in the *Compliance Filing* is inconsistent with the *Phase II Order*, Section 276 and the *Payphone Orders* and should be removed as suggested above.

III. Operator Call Completion Should Not Be Mandated

7. The NEPCC objects to the inclusion of “Operator Call Completion” as a mandatory component of PASL and PAL service in Sections 1.1.5C.2 and 1.2.4C.2 of the proposed tariff. Nothing in the *Phase II Order* requires the bundling of such service with PASL and PAL services. Operator Call Completion was not part of PAL service in the current tariff (*see* DTE MA No. 10, Part A, Section 8.2.3D.).

8. Based on past experience, the NEPCC is concerned about the billing of the charges for “Operator Call Completion” service and the prospect that these charges could be billed to a PSP’s “line” without any opportunity for the PSP to collect the amount billed from the end user. PSPs have, in the absence of effective screening, experienced substantial revenue losses as a result of fraudulent calls billed to the line. Since Operator Call Completion was not part of the current PAL tariff and was not required by the *Phase II Order*, it should be removed from Sections 1.1.5 and 1.2.4 of the draft tariff and blocked on any PALs. In the alternative, the tariff should be amended to require Verizon MA to indemnify any PAL subscriber against any charges for Operator Call

Completion that are billed to a PAL subscribers line.³

IV. There Is No Need For Part A Of The Proposed Tariff

9. Part A of the *Compliance Filing* sets forth a series of general tariff provisions that are now to be applicable to PASL and PAL services as part of a new tariff. Nothing in the *Phase II Order* required Verizon MA to file an entirely new tariff, complete with these general provisions. Moreover, the terms of the general materials in Part A are redundant, potentially confusing and substantively different.

10. For example, Section 1.3.1 of Part A contains definitions that are contained again in Section 1.2.1 of Part B. Section 1.8.1 of Part A refers to Directory Assistance and Operator Call Completion and Message Telephone Service, just as is set forth in Sections 1.1.5 and 1.2.4 of Part B.

11. More fundamentally, Part B states that Customers subscribing to PAL services are subject to all tariff regulations which apply to customers with one-party business exchange service. *See* Sections 1.1.2 and Section 1.2.2. If that is the case, what is the need for Part A?⁴

12. Indeed, Verizon has not explained to any degree how Part A differs from the regulations referenced in Section 1.2.2. and the extent to which Verizon MA is taking this opportunity to impose more burdensome and restrictive regulations on its competitors than the Department previously approved. For example, the new indemnification requirement imposed by Section 1.5.3B of proposed DTE MA No. 18 nowhere appears in Section 1.3.4 of DTE MA. No. 10. The *Phase II Order* does not direct or permit substantive changes to the general regulations previously applicable to PSPs.

³Section 5.7.1D of DTE MA No. 10 provides that Operator Call Completion Service is available to residence and business customers on a direct billed, collect, billed to third number or calling card basis. There is no indication that these calls would be subjected to effective screening to avoid the potential fraud problem.

⁴Under the existing PAL tariff, "Customers with PAL are subject to all tariff regulations which apply to customers with one-party business service including those for resale and sharing specified in Section 1." *See* Section 8.2.2A, DTE MA No. 10. Section 1 of DTE MA No. 10 addresses many of the same provisions that are now included in Part A.

13. Certainly, PSPs are prepared to adhere to the general tariff regulations *that have been applied to them in the past*. But the *Phase II Order* was not intended as a license for Verizon-MA to beef up or otherwise substantively modify these regulations as applied to its payphone service competitors. Moreover, it should be reasonably clear from looking at the tariff provisions what regulations are applicable to PSPs. With the inclusion of Part A, the language of the *Compliance Filing* leaves PAL subscribers to guess whether business regulations apply or Part A. Therefore, the provisions of Part A of the proposed tariff should be deleted where already addressed in Section 1 of DTE MA. No. 10 or elsewhere in the new tariff, or Verizon MA should be required to explain fully how these new Part A requirements differ from “tariff regulations which apply to customers with one-party business exchange service,” which are also (and have previously) applied to PSPs (*See* DTE MA No. 10, Section 8.2.2A) and why those differences are mandated to comply with the *Phase II Order*.

V. Directory Assistance Changes

14. The draft tariff provides that charges for Directory Assistance Service apply as specified in DTE MA. No. 10, Part A. Section 5.6. The current Section 5.6.2. of the same tariff indicates that there is a ten call allowance for each residence exchange line, business main telephone exchange service line, business PBX trunk line, DLS line, or Student Centrex main station line per billing period. There is no mention of PASLs or PALs therein. Section 5.6.2A.1. should be clarified to specify PAL and PASL lines, as is reflected, for example, in Section 5.6.1E.4 and 5.

VI. Billing Options

15. Section 1.2.4F of the proposed tariff provides that for PSPs with two or more PAL service lines, options as specified in DTE MA No. 10, Part A, Section 5.1.5D apply. Section 5.1.5D provides that “if a business customer has two or more exchange lines of the same class of service terminating at the same premises and billed from the same Revenue Accounting Office (RAO), one bill, including changes for services associated with such lines, may be rendered.” The existing tariff

for PAL provides that for business customers with two or more PAL service lines, regulations as specified in section 5.1.4D apply. See DTE MA No. 10, Part A Section 8.2.3B. Nothing on the *Phase II Order* requires this change. The *Compliance Filing* should not require any change in the current billing process, including the provision of summary bills in certain cases.

V. Elimination Of PAL Credit

16. In its *Compliance Filing* Verizon has eliminated the PAL credit contained in Section 8.2.3 of the existing tariff. Nothing in the *Phase II Order* requires or authorizes this change. Therefore, the *Compliance Filing* is inconsistent with the *Phase II Order* in this regard. The PAL credit provisions should be restored.

VI. Conclusion

17. Verizon MA's *Compliance Filing* is defective in the respects outlined in Sections II –VI above. The Department should promptly order the necessary revisions, to be effective not later than October 6, 2004.

Respectfully submitted,

**NEW ENGLAND PUBLIC COMMUNICATIONS
COUNCIL, INC.**

By its attorney,

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